TECHNICAL EXPLANATION OF U.S. - BELGIUM INCOME TAX CONVENTION, SIGNED JULY 9, 1970

(DEPARTMENT OF THE TREASURY)

GENERAL EFFECTIVE DATE UNDER ARTICLE 30: 1 JANUARY 1970

TABLE OF ARTICLES

ARTICLE 1

Personal Scope

This Article, which is not found in other United States tax treaties, is similar to Article 1 of the Draft Double Taxation Convention on Income and Capital developed by the Fiscal Committee of the Organization for Economic Cooperation and Development and published in 1963 (hereinafter referred to as the OECD Model Convention). The Article does not have substantive importance. Its purpose is to generally delineate the persons who come within the scope of the Convention. The Article is not complete in its delineation of persons covered in that persons who are residents of one or both of the Contracting States are sometimes not covered in the Convention and that other persons who are not residents of either of the Contracting States are covered by this Convention. For example, Article 19 (Governmental Functions) applies to citizens of a third State who come to one of the Contracting States expressly for the purpose of being employed by the other Contracting State. While the title of Article 1 is “Personal Scope,” the Convention, of course, is applicable to corporations and other entities as well as to individuals.

ARTICLE 2
Taxes Covered

This Article designates the taxes of the respective States which are the subject of the proposed Convention. With respect to the United States, the taxes included are the United States Federal income taxes imposed by the Internal Revenue Code. This includes, for example, the surtax and would also include such taxes as the temporary surcharge which was in force from 1968 to 1970. However, the Convention is not intended to apply to taxes which are in the nature of a penalty such as the taxes imposed under section 531 (accumulated earnings tax) and section 541 (personal holding company tax) of the Internal Revenue Code.

With respect to Belgium, the taxes included are
(1) the individual income tax;
(2) the corporate income tax;
(3) the income tax on legal entities;
(4) the income tax on nonresidents;
(5) the prepayments and additional prepayments; and
(6) surcharges on any of the taxes referred to in (1) through (5), including the communal supplement to the individual income tax.

The Belgian individual income tax is payable by resident individuals on income from all sources but with reduced rates for foreign source income.

The Belgian corporate income tax is payable by resident Belgian companies on income from all sources but with reduced rates for foreign source income.

The Belgian income tax on legal entities is a tax payable in lieu of the corporate income tax and is imposed upon the political subdivisions of Belgium and those resident legal entities which are not engaged in business activity. This tax is levied solely on income from movable capital (generally dividend and interest income) and real property.

The Belgian income tax on nonresidents is payable by nonresident individuals, corporations, and other legal entities on income earned or received in Belgium.

In addition to the above-enumerated taxes, prepayment of tax in the form of withholding by the payor is required by Belgian law in the case of income from movable capital (generally dividend and interest income) and income from real property. There is also a standard professional prepayment (withholding) which applies to wages and salaries, remuneration paid by a corporation to managers, directors and persons with similar functions, and to pensions, certain prizes and subsidies, and in the case of a nonresident recipient, alimony. These taxes are known as “les précomptes.” While Articles 2 also lists “additional prepayments” (compléments de précomptes), that tax, which was an additional 15 percent prepayment on income from movable capital, has not been in force since January 1, 1967. It was included at the request of Belgium in the case such tax is reestablished, although even in the absence of an express reference, a new or reestablished tax would be covered by paragraph (2) of this Article. In the case of income from real property, Belgian law provides for an additional advance payment in the case of taxpayers subject to the income tax on nonresidents whose fiscal domicile is in a country with whom Belgium has concluded a double taxation agreement giving Belgium exclusive right to tax real property situated in her territory. Since, under the proposed Convention, Belgium does not have an exclusive right to tax United States residents on income from real property, there is no additional advance payment on such income paid to United States residents.

Pursuant to paragraph (2) of this Article the proposed Convention would also apply to taxes substantially similar to those enumerated which are imposed in addition to or in place of the existing income taxes, after the date of a signature of this Convention (July 9, 1970).

This Article also provides that the competent authorities of the Contracting States are to notify each other of any amendments of the laws imposing the enumerated taxes and of the adoption of any taxes which are subsequently imposed by transmitting the text of any amendments or new statutes at least once a year. Further, the competent authorities are to notify each other of the publication by their respective States of any material concerning the application of this Convention, whether in the form of regulations, rulings, or judicial decisions, by transmitting the text of any such material at least once a year.

ARTICLE 3
General Definitions

This Article sets out definitions of certain of the basic terms used in the proposed Convention. A number of important terms, however, are defined elsewhere in the Convention.

Any term used in this Convention which is not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of the State which is imposing the tax. However, in a case where a term has a different meaning under the laws of Belgium and the United States or where the meaning under the laws of one or both of the States is not clear, the competent authorities may agree on a uniform definition. See Article 25 (Mutual Agreement Procedure). While treaties in the past did not specify the power of the competent authorities to resolve such differences in definitions, this power is nevertheless inherent in the authority set forth in the mutual agreement article of these treaties to resolve "difficulties or doubts."

This Article defines geographical Belgium and geographical United States to include their respective continental shelves. The addition of a definition of the continental shelf is intended to clarify what the Contracting States consider to be included within their respective jurisdictions to tax. The United States continental shelf is defined as the seabed and subsoil of the adjacent submarine areas beyond the territorial sea over which the United States exercises exclusive rights in accordance with international law for the purpose of exploration and exploitation of the natural resources of such area, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation. For example the income earned by a ship and its employees engaged in taking seismograph soundings on the United States continental shelf will be treated for tax purposes the same as the income from a comparable activity on the land of one of the States of the United States. A comparable definition is used in the case of Belgium. The definition of the continental shelf in the case of the United States only includes the continental shelf surrounding the 50 States. Thus, for example, the continental shelf surrounding Puerto Rico is not included. If the treaty were extended beyond the 50 States and the District of Columbia (see Article 29 - Extension to Territories) the continental shelf of the extended areas could also be covered. The defined continental shelf is only part of the United States or Belgium, as the case may be in limited situations. It is included only to the extent that a person or property or activity to which the Convention is being applied is connected with exploration or exploitation of the continental shelf. The phrase “connected with” does not require physical attachment to the continental shelf to be within the scope of the definition.

The Article also defines "United States corporation" and “Belgian corporation.” Because of the difference in concept, an entity could under Belgian law be considered to be a Belgian corporation and under United States law to be a United States corporation. For purposes of the proposed Convention, such a corporation would be treated as a corporation of neither State because of the provisions in the definitions of a corporation of the United States, and a corporation of Belgium, that an entity may not be considered a corporation of the United States, or Belgium, if it is a corporation of the other State under domestic law of that other State. While the benefits of the Convention would generally be unavailable in such cases, it is relatively easy for taxpayers to avoid dual residency.

ARTICLE 4
Fiscal Domicile

This Article sets forth rules for determining "fiscal domicile" or residence of individuals, corporations and other persons for purposes of the proposed Convention. Residence is important because, in general, only a resident of one of the Contracting States may qualify for the benefits of the Convention. This Article is patterned generally after the fiscal domicile article of the OECD Model Convention.

The term "a resident of Belgium" means a corporation of Belgium as defined in Article 3 (General Definitions) and any person (other than a corporation) who is a resident of Belgium for purposes of its tax. The term "a resident of the United States" means a United States corporation as defined In Article 3 (General Definitions) and any person (except a corporation or any other entity treated as a corporation for United States tax purposes) resident in the United States for purposes of its tax. The language in parentheses is intended to deal with the problem of dual residency of a corporation. An entity which would be considered a Belgian corporation under Belgian law and a United States corporation under United States law would, under Article 3 (General Definitions) of the Convention, be neither a Belgium corporation nor a United States corporation. Therefore, it was necessary to make clear that such an entity is not included within the term "any person" for purposes of the second part of the definitions. In addition, the parenthetical language in the definition of a resident of the United States is intended to make clear that a foreign corporation, or other entity treated as a foreign corporation for United States tax purposes, which is a resident of the United States for certain purposes of its income tax law is not, under the Convention, a resident of the United States.

In the case of the United States, the definition provides that a partnership, estate, or trust is treated as a resident only to the extent that the income derived by such person is subject to United States tax as the income of a resident. This language, although different from the Income Tax Convention between the United States and France, signed July 28, 1967, is intended to achieve the same result. Under United States law, a partnership is never, and an estate or trust is often not, taxed as such. Under the proposed Convention, in the case of the United States, income received by a partnership, estate, or trust will not qualify for the benefits of the Convention unless such income is subject to tax in the United States. Thus, in effect, the status of income which is subject to tax only in the hands of the partners or beneficiaries, will be determined by the residence of such partners or beneficiaries. With respect to income taxed in the hands of the estate or trust, the residence of the estate or trust is determinative. This provision is nonreciprocal because of the absence of a similar problem under Belgian law.

An individual who is a resident of both States under the rules of domestic law employed by such States for determining residence will be deemed to be a resident of the State in which he has his permanent home, his center of vital interests (closest economic and personal relations), his habitual abode, or his citizenship, in the order listed. If the issue is not settled by these tests, the competent authorities will decide by mutual agreement the one State of which he will be considered to be a resident. Thus for purposes of the Convention, including the savings clause of Article 23(1), an individual can be resident in Belgium or the United States, but not both.

ARTICLE 5
Permanent Establishment

This Article defines the term "permanent establishment." The existence of a permanent establishment is, under the terms of the proposed Convention, a prerequisite for one State to tax the industrial or commercial profits of a resident of the other State. The concept is also significant in determining the applicability of other provisions of the Convention, such as Article 10 (Dividends), Article 11 (Interest), Article 12 (Royalties), and Article 13 (Capital Gains). The definition of "permanent establishment" is a modernized version of the definition found in some of our older treaties including the 1948 Convention with Belgium. The new definition is similar to the definition found in our French Convention.

The term "permanent establishment" means "a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity." Illustrations of the concept of a fixed place of business include a seat of management, a branch, an office, a factory, a workshop, a warehouse, a place of extraction of natural resources, or a building site or construction or installation project which exists for more than 12 months. As a general rule, any fixed facility through which an individual, corporation or other person conducts industrial or commercial activity will be treated as its permanent establishment unless it falls in one of the specific exceptions described below. The proposed Convention uses the term "a seat of management" which was the term used in our Convention with France. The technical explanation of our French Convention explains the definition of the term "a seat of management" and its difference in meaning from the term "a place of management" as follows:

> It should be noted that this convention uses the term "seat of management" where the OECD Model Convention and prior agreements to which the United States is a party used the term "place of management"; both terms are translations of the French term "un siege de direction" and it is believed the translation found in this convention is the more accurate. Prior agreements in which the term "place of management" appears will be interpreted therefore as if the words "seat of management" had been used.

That explanation is applicable to the proposed Belgian Convention.

This Article specifically provides that a permanent establishment does not include a fixed place of business of a resident of one of the Contracting States which is located in the other Contracting State if it is used only for one or more of the following -

(1) the use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;

(2) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

(3) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(4) the maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

(5) the maintenance of a fixed place of business for the purpose of advertising, or the supplying of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; or

(6) the maintenance of a building site or construction or installation project which does not exist for more than 12 months.

The building site or construction or installation project exception is merely a clarification of the rule that such an activity for more than 12 months is a permanent establishment and, accordingly, such an activity for 12 months or less is not a permanent establishment. These exceptions are cumulative and a site or facility used solely for more than one of these purposes will not be considered a permanent establishment under the proposed Convention. The 12-month construction project rule is a physical test under which the resident must be actively engaged in the project during that 12-month period.

This Article also provides that notwithstanding the provisions described in the preceding paragraph if three conditions are met, a resident of one State will have a permanent establishment in the other State. The conditions are:

1. The resident has a fixed place of business in that other State

(a) which consists of facilities for the storage, display or delivery of goods or merchandise belonging to the resident;

(b) which consists of a stock of goods or merchandise belonging to the resident which is held for processing by another person; or

(c) which is used for the purpose of purchasing goods or merchandise for the resident;

2. The goods or merchandise described in paragraph 1 above are either subject to substantial processing in that State (whether or not purchased there) or are purchased in that other State (and are not thereafter subject to substantial processing in another State); and

3. All or part of such goods or merchandise is sold by the resident or his agent for use, consumption, or disposition in that other State.

Under this rule, the taxpayer will have a permanent establishment whether or not he maintains a sales office in the other State.

Thus, for example, if an independent agent acting for a United States corporation arranges the sales of the corporation's goods in Belgium the United States corporation will, nevertheless, be deemed to have a permanent establishment in Belgium if those goods were purchased in Belgium through a fixed place of business of the corporation (ordinarily a purchasing office would not constitute a permanent establishment) and then resold therein without having been subjected to processing outside Belgium prior to such resale.

Notwithstanding the other provisions of this Article, a person will be considered to have a permanent establishment if he engages in business through an agent, other than an independent agent, who has and regularly exercises authority to conclude contracts in the name of such person unless the agent only exercises such authority to purchase goods or merchandise.

With respect to an independent agent, the proposed Convention also provides that a resident of one State will not be deemed to have a permanent establishment in the other State if such resident engages in industrial or commercial activity in such other State through an independent agent, such as a broker or general commission agent, if such agent is acting in the ordinary course of his business. This rule does not apply with respect to a broker or agent acting on behalf of an insurance company if such broker or agent has, and habitually exercises, an authority to conclude contracts in the name of that company. It was agreed, however, that an insurance company of one State writing reinsurance contracts in the other State would not for that reason be treated as having a permanent establishment, but since it was understood that foreign companies writing reinsurance on Belgian risks do not authorize Belgian brokers or agents to conclude reinsurance contracts in the name of the foreign reinsurance company, it was not necessary to specifically exclude reinsurance contracts from the exception.

The determination of whether a resident of one State has a permanent establishment in the other State is to be made without regard to any control relationship of such resident with respect to a resident of the other State or with respect to a person which engages in industrial or commercial activity in that other State (whether through a permanent establishment or otherwise).

Although this Article is generally drafted with reference to a resident of one of the States engaging in industrial or commercial activity in the other State, for certain purposes the proposed Convention deals with a nonresident engaging in industrial or commercial activity in one of the States or a resident of one of the States engaging in industrial or commercial activity in a third State. For these purposes, the principles set forth in Article 5 are to be applied in determining whether there is a permanent establishment.

ARTICLE 6
Income from Real Property

This Article which is similar to an article in the existing treaty provides that a resident of one State may be subject to tax in the other State on income from real property and royalties in respect of natural resources if the property or natural resource is located in such other State. This Article does not, as do the existing treaty and the 1967 treaty between the United States and France, provide for an election by the resident to compute his tax on such income on a net basis since under the internal laws of Belgium and, since 1967, the United States this can be done. The income referred to in this Article includes gain from the sale or exchange of such property or such natural resource rights, but does not include interest on mortgages and similar instruments. The latter type of income is covered by Article 11 (Interest).

ARTICLE 7
Business Profits

This Article sets forth the typical treaty rule that industrial or commercial profits of a resident of one State are taxable in the other State only if the resident has a permanent establishment in that other State. Where there is a permanent establishment only the profits attributable to the permanent establishment can be taxed by that other State. For purposes of Article 23 (Relief From Double Taxation) which, among other things, provides that a foreign tax credit will be allowed by the United States, such profits are considered to be from sources within the State in which the permanent establishment is located.

While under the existing Belgian Convention, as under the old French Convention, industrial or commercial profits are not taxed in the absence of a permanent establishment once there is a permanent establishment the existing Convention, as did the old French Convention, provides that the provisions reducing the tax rates on interest and dividends and exempting royalties are not applicable. This rule is known as the "force of attraction " principle and is replaced in the proposed Convention, as in our new treaty with France, with the effectively connected concept. Under the new approach, only those interest, dividends and royalties which are effectively connected with the permanent establishment are taxable as part of the industrial or commercial profits and do not benefit from the reduced rate or exemption.

In determining the proper attribution of industrial or commercial profits under the proposed treaty, the permanent establishment is generally to be treated as an independent entity and considered as realizing the profits which would be realized if the permanent establishment dealt with the resident of which it is a permanent establishment on an arm's-length basis. Expenses, wherever incurred, which are reasonably connected with profits attributable to the permanent establishment, including executive and general administrative expenses, will be allowed as deductions by the State in which the permanent establishment is located in computing the tax due to such State. However, it is not necessary to allow a profit to the head office for ancillary services furnished to the permanent establishment as long as the permanent establishment is allowed to deduct the allocable costs incurred by the head office.

The mere purchase of goods or merchandise in a State by the permanent establishment, or by the resident of which it is a permanent establishment, for the account of such resident will not cause attribution of profits to such permanent establishment

While some of our more recent conventions attempt a broad definition of "industrial or commercial profits" by setting forth examples of activities which will be considered as giving rise to such profits, this Convention is limited to setting forth three rules of inclusion and exclusion. In spite of the difference in approach, the term "industrial or commercial profits" has a meaning generally similar to that in our other recent treaties. It includes income derived from manufacturing, mercantile, agricultural, fishing, or mining activities, from the operation of ships or aircraft, from the furnishing of personal services of others, from the rental of tangible personal property, and from insurance activities.

This Article specifically provides that the term "industrial or commercial profits" includes rents or royalties derived from motion picture films or films or tapes used for radio or television broadcasting or from copyrights thereof and rents derived from the leasing of tangible personal property.

The Article further provides that the term does not include items of income specifically dealt within other articles of this Convention except as provided in such articles. Thus, income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (2) of Article 12 (Royalties)), capital gains, and income described in Article 22

(Income Not Expressly Mentioned) constitute industrial or commercial profits only if the right or property giving rise to such amounts is effectively connected with a permanent establishment which the recipient, being a resident of one of the States, has in the other State. Where such amounts do not constitute industrial or commercial profits, they may be taxed separately or together with industrial or commercial profits in accordance with the laws of the State whose tax is being determined, but the limits on the rate of taxation to which such amounts may be subject must be observed.

For example, if a Belgian bank without a permanent establishment in the United States loaned money to a United States manufacturer in the United States, the interest paid by the United States manufacturer to the Belgian bank would be treated as interest and not as industrial or commercial profits and would be governed by Article 11 (Interest) of the proposed Convention which provides for either an exemption or a 15-percent withholding rate.

In the reverse situation where a United States bank with a branch in Belgium derives interest from Belgium which is not effectively connected with its Belgian branch, Belgium could tax the interest together with the income of the permanent establishment as long as the rate of tax on the gross amount of the interest did not exceed the 15-percent limitation.

Income from independent and dependent personal services are specifically dealt within Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services) and, therefore, are not treated as business profits. It is noted that in some of our other recent conventions, there is an express provision excluding such services from the terms "industrial or commercial profits." While there is no such provision in the Belgian Convention, the result is the same.

ARTICLE 8
Shipping and Air Transport

This Article provides that, notwithstanding the rules of Article 7 (Business Profits) and Article 13 (Capital Gains), income which a resident of one of the States derives from the operation in international traffic of ships registered in that State and gains which a resident of one of the States derives from the sale, exchange, or other disposition of ships operated in international traffic by such residents and registered in that State shall be exempt from tax by the other State.

A resident of one of the States will also be exempt from tax in the other State on income derived from the operation in international traffic of aircraft registered in either State or In a State with which the other State has an income tax convention exempting such income. Gains which a resident of one of the States derives from the sale, exchange, or other disposition of aircraft are accorded the same treatment. An exchange of notes specifically exempting income from the operation of aircraft from tax in the respective States is not considered as an income tax convention exempting such income.

This Article also will apply to income derived from the leasing, to a person engaged in the operation of ships or aircraft, of a ship or aircraft under a full or bareboat charter, where the lessor is engaged in the operation of ships or aircraft if such lease is ancillary to the lessor's other operations. For example, if an airline of one of the Contracting States which has excess equipment in the winter months leases several aircraft which are excess during that period to an airline in the other Contracting State, the lessor is not subject to tax by that other Contracting State.

The exemption provided by this Article is also applicable to profits derived from any activities incidental to the operation of ships or aircraft in international traffic. Thus, for example, commissions derived by a Belgian international air carrier from the sale of passenger tickets in the United States as agent for other persons operating ships or aircraft, if incidental to its own international operations, will be exempt from United States tax under Article 8. Further, a Belgian airline company might have facilities at an international airport in the United States which are used to service and maintain its own aircraft in order to make maximum use of the facilities, the company might also service and maintain aircraft of other companies. The profits derived from the furnishing of such services to others would be exempt under Article 8 unless such activity ceased to be only an incidental activity. However, income derived by a Belgian airline company from the operation of a hotel in the United States would not be incidental to the operation of aircraft and would not be exempt.

ARTICLE 9
Associated Enterprises

This Article complements section 482 of the Internal Revenue Code of 1954 and confirms the power of each government to allocate items of income, deduction, credit, or allowance in cases in which a resident of one State is related to a resident of the other State if such related persons impose conditions between themselves which are different from conditions which would be imposed between independent persons. This provision is similar to the provision contained in the OECD Model Convention.

Provision is made in Article 25 (Mutual Agreement Procedure) for consultation and agreement between the two States where an allocation by either State results or would result in double taxation.

ARTICLE 10
Dividends

The existing Convention provides that dividends derived from sources within one State by a resident of the other State not having a permanent establishment in the former State will be subject to tax in the former State at a rate not in excess of 15 percent. The proposed Convention continues the 15 percent rate on dividends.

As indicated above, the proposed Convention abandons the "force of attraction" concept in the existing Convention by providing that the reduced rate of tax on dividends is denied only if the shares with respect to which the dividends are paid are effectively connected with a permanent establishment which the recipient has in the State of source. The elimination of the "force of attraction" principle will make uniform the rate of tax levied on dividend income by a resident of one State from sources within the other State unless such income is effectively connected to a permanent establishment in the State of source. In those cases where the shares with respect to which the dividends are paid are so effectively connected, the dividends may be taxed as industrial and commercial profits under Article 7 (Business Profits). Income which is so effectively connected may be taxed at the normal rates applicable to such income in the State of source. This does not prevent Belgium from imposing its movable property prepayment in accordance with Belgian law, and this would be credited against the tax owed by the permanent establishment.

The dividend Article of the proposed Convention is patterned generally after the OECD Model Convention. However, the proposed Convention additionally provides that the term "dividends" includes income from invested capital received by members of Belgian companies other than companies with share capital where, under Belgian law, such income is taxable in the same way as dividends. These are companies whose shareholders are restricted to individuals and are generally similar to partnerships. Such companies are not entitled to an interest deduction on a loan made by a shareholder to the company. Interest payments by such a company to a shareholder are treated similarly to dividends for purposes of Belgian law and are treated as dividends under the proposed treaty. The companies covered by this latter rule are Sociétiés de Personnes à Responsabilité Limiteé, Sociétés en nom Collectif, Sociétés en Commandite Simple, and Sociétés Coopératives.

Under Belgian law dividends paid to an individual from sources outside of Belgium which are received within Belgium are subject to a 20-percent précompte mobiliere. The précompte is used by Belgium as a collection device since most securities are in bearer form and the residency of the owner is not readily determinable. Belgium has agreed under this Article to waive collection of the précompte on dividends paid by United States corporations to an individual who is a resident or citizen of the United States and not a resident of Belgium. Such individual when he goes to a Belgian bank to collect on a dividend will have to substantiate his citizenship (where applicable) and residency and it is anticipated that the Belgian Government will verify the fact that such person is the proper recipient of the dividend by submitting their names to the Internal Revenue Service.

In other cases, dividends paid by a corporation of one of the States to a person other than a resident of the other State are exempt from tax by the other Slate unless the dividends are effectively connected with a permanent establishment of the recipient maintained in the other State or the dividends are paid by a United States corporation and are received within Belgium by a person other than a citizen or resident of the United States.

ARTICLE 11

Interest

The existing Convention provides that interest derived from sources within one State by a resident of the other State not having a permanent establishment in the former State will be subject to tax in the former State at a rate not in excess of 15 percent.

The proposed Convention retains the 15 percent rate on interest replacing the "force of attraction" principle by the effectively connected approach. In four important cases, however, the proposed Convention provides for exemption in the State of source. First, interest is exempt at source if it arises out of commercial credit - including credit which is represented by commercial paper - resulting from deferred payments for goods or merchandise or services supplied by a resident of one of the States to a resident of the other State. This exception would apply to interest derived by a bank or other financial institution which purchases paper which arose out of commercial credit which the seller of goods or services discounted at such bank or financial institution. It would also apply to interest derived by a finance company which is a subsidiary of a selling company and which is used by the parent to finance its sales. Second, interest paid between banks is exempt except on loans represented by bearer instruments. Under this provision, interest on advances between banks would be exempt as would interest on a loan from a United States bank to a Belgian bank, assuming that there was not a bearer instrument representing the indebtedness. Third, an exception is provided for interest arising from deposits, not represented by bearer instruments made in banks or other financial institutions. Fourth, interest beneficially derived by one of the States, or by an instrumentality of that State, not subject to tax by that State on its income, would be exempt from tax by the other State. Under this rule, interest income derived by the Export-Import Bank of the United States on loans made to Belgian residents would be exempt from tax in Belgium. This would still be the case if the Export-Import Bank sold interest-participation certificates on such a loan. On the other hand, this rule would not apply if the Export-Import Bank discounted or sell the instrument representing the loan. However, in such a case the exception for interest arising out of commercial credit may be applicable.

As noted above, the proposed Convention abandons the "force of attraction" principle. Thus, the reduced rates of tax applicable to interest apply unless the recipient has a permanent establishment in the State of source and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, the interest may be taxed as industrial or commercial profits.

Interest is defined generally as income from any kind of debt-claim or any income treated as interest under the tax law of the State of source. In cases in which excessive interest is paid by reason of a special relationships between the payor and the recipient, the provisions of the interest Article do not apply to the excess part of the payments. Excess interest payments may be taxed according to the law of the State from which the interest is derived. In the case of excess interest derived from the United States, the excess interest may be taxed as dividend. Under Belgian law, the excess interest is disallowed as a deduction, but, in the hands of the recipient, continues to retain its character as interest. However, the recipient is not entitled to the benefits of this Article with respect to such excess.

Thus, for example, in the case of the United States the rules provided in section 482 of the Internal Revenue Code would be applicable if excess interest is paid between related persons. On the other hand, if a Belgian resident pays excess interest to a United States related person, the Belgian tax authorities would disallow such excess as a deduction to the Belgian resident. and would continue to treat such excess as interest, and subject such excess to the 20-percent rate of withholding, as provided under Belgian domestic law. since such excess is not entitled to treaty benefits.

The term "interest" does not include amounts which are considered as dividends as discussed above in connection with Article 10 (Dividends). In the case of Belgium, the term "interest" includes prizes on lottery bonds.

Interest is from sources within a State when the payer is that State, a political subdivision, a local authority thereof or a resident of that State. However, if the payor has a permanent establishment in one of the States and the indebtedness on which the interest is paid is effectively connected with such permanent establishment and the interest is borne by such permanent establishment, such interest shall be deemed to be sourced within the State in which the permanent establishment is located. In addition, if a permanent establishment which a resident of one of the Contracting States has in a third State borrows money from a resident of the other Contracting State, for purposes of the treaty, the interest paid by the permanent establishment will be treated as from sources within the third State if the loan is effectively connected with, and interest is borne by, such permanent establishment.

In other cases, interest paid by a resident of one of the States to a person other than a resident of the other State is exempt from tax by the other State unless the interest is effectively connected with a permanent establishment of the recipient maintained in the other State or the interest is paid by a United States corporation and is received within Belgium by a person other than a citizen or resident of the United States.

As in the case of dividends, the interest Article also contains a special rule dealing with interest from sources within the United States which is received within Belgium by a resident of the United States or a citizen of the United States who is not a resident of Belgium. In such a case Belgium has agreed to waive its withholding tax.

ARTICLE 12
Royalties

The existing Convention provides that royalties derived from sources within one of the States by a resident of the other State shall be exempt from tax by the former State. The proposed Convention continues this exemption for royalties.

The term “royalties” is defined to include

(a) payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works (but not including copyrights of motion picture films or films or tapes used for radio or television broadcasting), patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or knowledge, experience, or skill (know-how) and

(b) gains derived from the sale, exchange or other disposition of such rights or property, but only if payment is contingent on productivity, use, or disposition of the property. If the payments are not so contingent, the capital gains Article applies.

The provisions of this Article do not apply if the recipient of a royalty has a permanent establishment in the State of source and the rights or property giving rise to the royalty is effectively connected to such permanent establishment. In such a case, the royalty may be taxed as industrial or commercial profits under Article 7 (Business Profits). Thus, the “force of attraction” principle is also abandoned with respect to royalties.

The source rule on royalties is different front the source rule found in most of our recent treaties and the rule in Section 861(a)(4) of the Internal Revenue Code. The proposed Convention provides that royalties shall be treated as income from sources within one of the States if paid by such State, a political subdivision, or a local authority thereof, or by a resident of that State. However,

(a) if the person paying the royalty has a permanent establishment in one of the States with which the right or property giving rise to the royalty is effectively connected and such royalties are borne by such permanent establishment, or

(b) if the person paying the royalty is a resident of one of the Contracting States and has a permanent establishment in a third State with which the right or property giving rise to the royalty is effectively connected and such royalties are borne by such permanent establishment

such royalties are deemed to be from sources within the State in which the permanent establishment is located. This source rule is similar to the interest source rule found in Article 11 (Interest) of the proposed Convention and to the source rule for royalties under Belgian domestic law. On the United States side, since royalties are exempt at source, the source rule on royalties is relatively unimportant. However, on the Belgian side, because of the treatment given under Belgian law for excessive royalty payments, the source of royalty has importance. Under the proposed Convention, if excessive royalties are paid because the payor and the recipient are related, the provisions of the royalty Article apply only to so much of the royalty as would have been paid to an unrelated person. The excess payment may be taxed according to its own law by the State from which the royalty is derived. In the case of Belgium, Belgium would deny a deduction for the excess royalty payments, but, in the hands of the recipient, the payment would still be considered to be a royalty under Belgian domestic law. However, the recipient is not entitled to the benefits of this Article with respect to such excess.

If a nonresident has a permanent establishment in Belgium or the United States, royalties attributable to effectively connected with such permanent establishment are not subject to withholding but are subject to tax in Belgium or the United States at the rates normally applicable to industrial or commercial profits.

ARTICLE 13
Capital Gains

The existing Convention provides no special rules for gains derived in one State from the sale or exchange of stock securities, commodities, or other capital assets by a resident of the other State. The proposed Convention provides that such gains shall be exempt from tax by the State of source. However, the exemption does not apply if

(1) the gain derived by a resident of one State arises out of the sale or exchange of property described in Article 6 (Income from Real Property) which is situated within the other State,

(2) the recipient of the gain has a permanent establishment or maintains a fixed base, or

(3) the recipient of the gain being an individual resident of the first State is present in that other State for a period or periods aggregating 183 days or more in the taxable year.

Gains which are effectively connected with a permanent establishment may be taxed as industrial or commercial profits under Article 7 (Business Profits). Gains on real property are subject to the provisions of Article 6 (Income from Real Property) which permits taxation of such gains by the State in which the real property is situated. The Belgians do not tax capital gains of individuals arising from a casual sale of nonbusiness assets.

ARTICLE 14
Independent Personal Services

The existing Convention provides that an individual resident of one State shall be exempt from tax by the other State if he meets either of two conditions:

> (a) he is present in that other State for not more than 183 days and his compensation is for services performed as a worker or employee of, or under contract with, a resident of the first State who bears the actual burden of the remuneration or
>
> (b) he is temporarily present within that other State for a period or periods not exceeding 90 days during the calendar year and the compensation received for such services does not exceed $3,000 in the aggregate.

The 90-day, $3,000 rule under the existing Convention does not apply to remuneration of "administrateurs," "commissaires," or "liquidateurs" of,. or of other individuals exercising similar functions in, corporations created or organized in Belgium, nor to remuneration of officers and directors of United States corporations.

The proposed Convention generally deals with personal services in two articles and creates a distinction based upon whether the services are independent or dependent personal services. The proposed Convention also provides a special rule for independent individuals who are artists or athletes, and a separate Article dealing with directors' fees. Thus, for example, a doctor or lawyer typically renders independent personal services. Also an entertainer who under common law concepts is an independent contractor is considered as rendering independent personal services.

Generally, under Article 14 of the proposed Convention, income earned by an individual resident of one State from independent personal services performed in the other State may not be taxed in that other State. However, such income will be subject to tax in the State of source (*i.e.*, where the services are performed) if the recipient is present in that State for a period or periods aggregating 183 days or more in the taxable year or if the individual maintains a fixed base in that other State for a period or periods aggregating 183 days or more in the taxable year and the income is attributable to such fixed base.

Independent personal services means services performed by an individual for his own account where he receives the proceeds or bears the losses arising from such services. Commercial, industrial, or agricultural activities are not considered independent personal services and the income therefrom is taxed as industrial or commercial profits under Article 7 (Business Profits).

Thus, for example, if a physician, resident in one State, has an office available in the other State for a period aggregating 183 days or more during the taxable year, the income he earns from the performance of services within the other State will be subject to tax in that other State regardless of whether he is physically present in that other State for 183 days or more during the taxable year and regardless of whether others make use of his office in his absence.

An individual who derives income from independent personal services as a public entertainer is nevertheless subject to tax in the other State if his stay in such State exceeds 90 days during the taxable year or his income is in excess of $3,000 or its equivalent in Belgian francs during the taxable year.

ARTICLE 15
Dependent Personal Services

Generally, under the proposed Convention income from labor or personal services as an employee may be taxed in the State in which such labor or personal services are performed (except as provided in Article 20 (Teachers) and Article 21 (Students and Trainees)). However, such income will be exempt from tax in the State of source if

(1) the recipient, being a resident of one of the Contracting States, is present in the State of source for a period or periods aggregating less than 183 days during the taxable year;

(2) the recipient is an employee of a resident of the State of his residence (or a permanent establishment located in the State of his residence); and

(3) the remuneration is not borne as such by a permanent establishment which the employer has in the State of source. Thus, the rule applicable to dependent personal services is similar to that contained in the existing Convention.

However, income from personal services performed in Belgium by a United States resident who is employed by a Belgian permanent establishment maintained by a United States corporation would no longer be exempt from tax in Belgium (nor would there be an exemption from United States tax in the reverse situation). In addition, the proposed Convention would eliminate the rule in the existing Convention generally exempting a resident of one State from taxation by the other State of compensation received for services performed in the other State where such resident is temporarily present in the other State for a period aggregating 90 days or less during the taxable year and the compensation received for such services is not in excess of $3,000. The proposed Convention also adds a rule that income from personal services aboard ships or aircraft registered in one State and operated by a resident of that State in international traffic will not be taxed in the other State so long as the services are rendered by a member of the regular complement of the ship or aircraft.

This Article of the proposed Convention is substantially similar to the OECD Model Convention except that, under the proposed Convention, an individual temporarily present in one State who is an employee of a permanent establishment located in the other State and maintained by a corporation of the first-mentioned State will be exempt from taxation by the first-mentioned State on wages earned while temporarily present therein if the other requirements are met.

ARTICLE 16
Director’s Fees

Under the existing Convention, compensation received by an individual who is a resident of one State as a director of a corporation of the other State is taxable by the other State. This result is obtained by the exclusion of such individuals from the 90-day, $3,000 rule. The proposed Convention continues this treatment, in part, in a specific Article dealing with the treatment of director's fees. The Article provides that a director's fee derived by an individual who is a resident of one of the States in his capacity as a member of the board of directors of a corporation of the other State may be taxed by the other State. This rule is limited to fees which an individual receives as a director as contrasted to fees that he might receive as an officer or employee of a corporation, by providing that a director's fee does not include fixed or contingent payments derived by an individual in his capacity as an officer or employee of a corporation. Further, to be a director's fee the payment must be of the type which cannot be taken as a deduction by the corporation paying the fee but is treated as a distribution of profits. These types of payments are typically made by Belgian corporations.

Director's fees taxable by Belgium under this Article are treated as Belgian source income for purposes of the United States foreign tax credit limitation regardless of where such services as a director are performed. This rule, which differs from the normal United States source rule, is designed to avoid double taxation.

ARTICLE 17
Social Security Payments

This Article provides that social security payments paid by one State to an individual who is a resident of the other State will be taxed, if at all, by the payor State. Also included under this Article are other public pensions such as railroad retirement benefits. Neither the existing Convention nor the OECD Model Convention contains a comparable provision.

ARTICLE 18
Private Pensions and Annuities

The existing Convention provides that private pensions and annuities derived from sources within one State by an individual resident of the other State are exempt from tax in the State of source. The proposed Convention continues the existing rule by providing that pensions and other similar remuneration paid in consideration of past employment and annuities received by a resident of a State will be taxable only in the State of residence. However, pensions coming within the scope of Article 19 (Governmental Functions) will be taxable only by the State making payment.

The proposed Convention also provides that alimony paid to a resident of a State will be taxable only in the State of residence. A United States resident making alimony payments to a Belgian resident may deduct such payments (unless section 71(d) or 682 of the United States Internal Revenue Code applies).

The term "annuities" is defined as a stated sum paid periodically at stated times during life. or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than for services rendered). The term "pensions" is defined as periodic payments made after retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.

The effect of this provision is generally the same as that of the OECD Model Convention.

ARTICLE 19
Governmental Functions

The existing Convention exempts compensation including pensions and annuities paid by one of the States or a political subdivision or territory thereof to a citizen of that State residing in the other State (whether or not also a citizen of the other State) from taxation by that other State. The proposed Convention continues the exemption but adds a specification that the compensation must be paid in connection with the discharge of functions of a governmental nature. Compensation paid in connection with industrial or commercial activity is treated the same as compensation received from a private employer. The provisions relating to dependent personal services, private pensions and annuities, and social security payments would apply in such a case.

The proposed Convention extends the category of individuals who are eligible for the exemption to citizens of a third State who come to a State expressly for the purpose of being employed by the other State, a political subdivision, or a local authority thereof.

ARTICLE 20
Teachers

The existing Convention provides that teachers who are citizens of one State and who, pursuant to agreements between the States or teaching establishments in the States, accept a teaching position at an educational institution in the other State shall be exempt from taxation in such other State on remuneration received for such teaching, for a maximum period of two years.

The proposed Convention continues and broadens the 2-year exemption period for visiting teachers. This exemption applies to an individual who is a resident of one State at the time he is invited by the other State or by a recognized educational institution of the other State to teach or do research in the other State and temporarily comes to such other State in order to engage in such teaching or research. Invitation may be by the Government or a university or other recognized educational institution and research or teaching must be done at such university or other recognized educational institution. For purposes of the United States, the term “recognized” will be construed to mean accredited. However, the exemption does not apply to income from research undertaken not in the public interest but primarily for private benefit of a specific person or persons. If the individual's visit exceeds a period of 2 years from the date of arrival, the exemption applies to the income received by the individual before the expiration of such 2-year period.

ARTICLE 21
Students and Trainees

Under the existing Convention remittances received from within one State by citizens of that State residing in the other State for the purpose of study are exempt from tax by the other State. The OECD Model Convention includes a similar provision.

The proposed Convention expands the exemption available to students by providing that an individual who is a resident of one State at the time he becomes temporarily present in the other State for the purpose of studying at a university or other recognized institution. of securing training for qualification in a profession or of studying or doing research as recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational institution is exempt from tax in the host State on:

(1) Gifts from abroad for his maintenance and study;

(2) The grant, allowance, or award;

(3) Income from personal services performed in the host State not in excess of $2.000 (or its equivalent in Belgium francs) for any taxable year.

These exemptions continue for such period of time as may be reasonably or customarily required to effectuate the purpose of his visit but in no event may an individual have the benefit of this

Article and Article 20 (Teachers) for more than a total of 5 taxable years from the date of arrival.

In addition, a resident of one State employed by or under contract with a resident of that State who, at the time he is a resident of that State, becomes temporarily present in the other State for the purpose of studying, or acquiring technical, professional, or business experience from a person other than a resident of the first-mentioned State or a person related to such resident, is exempt from tax in the host State on income not in excess of $5,000 (or its equivalent in Belgian francs) from personal services rendered in the host. The individual is exempt for a period of 12 consecutive months which period commences with the first month in which he begins working or receiving compensation.

Also an individual who is a resident of one State and who is temporarily present in the host State as a participant in a government program of the host State for the primary purpose of training, research, or study is entitled to an exemption by the host State with respect to his income from personal services relating to such training, research, or study performed in the host State in an amount not in excess of $10,000 (or its equivalent in Belgium francs). To be entitled to this exemption the program must be a program which does not exceed 1 year in duration. If this qualification is met, then the income from personal services received with respect to such program is exempt.

If an individual qualifies for the benefits of more than one of the provisions of the personal services articles, he may choose the provision most favorable to him, but he may not claim the benefits of more than one provision in any taxable year as a means of avoiding the limitations provided.

ARTICLE 22
Income Not Expressly Mentioned

This Article of the proposed Convention contains a general rule that items of income of a resident of one of the States which are not expressly mentioned in the foregoing articles of the proposed Convention shall be taxable only in that State except that, if such income is derived from sources within the other State, that other State may also tax such income. This rule provides for the same result as found in paragraph (1) of Article 22 (General Rules of Taxation) of our French Convention which provides that any income from sources within a State to which the Convention is not expressly applicable will be taxable by that State in accordance with its own law. For example, because income from prizes or awards is not generally covered by the Convention, such income will ordinarily be taxed in accordance with the internal law of the State from which such income is derived. However, this Article does not apply to industrial and commercial profits attributable to a permanent establishment since such income is expressly covered in Article 7 (Business Profits). The existing Convention does not contain an express statement of this general rule. The OECD Model Convention differs on this point and provides that income which is not expressly mentioned will be taxable only in the State of residence. In any event it should be noted that the proposed Convention specifically covers most types of income.

ARTICLE 23
Relief from Double Taxation

Under the existing Convention the United States provides relief from double taxation by allowing a credit for Belgian tax which credit shall not exceed that proportion of the United States tax which the net income from sources within Belgium bears to the total net income of such citizen or resident.

The proposed Convention employs the same method of avoiding double taxation. It provides that subject to the provisions of United States law applicable for the taxable years, a credit against United States tax will be allowed to a citizen or resident of the United States for Belgian tax paid. The credit is based upon the amount of tax paid to Belgium but may not exceed the amount of United States tax attributable to such income. Except for the special source rules provided by the Convention, this provision does not add to the rights which a United States citizen or resident has to the foreign tax credit. but is for the purpose of giving treaty recognition to such rights. Modifications in United States law after the effective date of the Convention which concern the foreign tax credit will be applicable with respect to Belgian source income if such modifications do not contravene the general principle of the Convention.

The proposed Convention also contains the traditional savings clause under which the United States reserves the right to tax its citizens and residents as if the Convention had not come into effect. However, the savings clause does not apply in several cases in which its application would contravene policies reflected in the Convention. Thus, the savings clause does not affect the provisions with respect to the foreign tax credit, social security payments, nondiscrimination, or mutual agreement procedure. Moreover, the savings clause will not deny the benefits of the Convention to governmental employees or teachers or students unless such individuals are citizens of the United States or have immigrant status in the United States.

In the case of Belgium the Article provides a detailed procedure for the avoidance of double taxation. Generally, the method used is the exemption method but in some circumstances, it is the credit method. This system of avoidance of double taxation is similar to that found in the existing Convention. The provisions are based upon the law of Belgium relating to the imposition of tax on Belgians receiving income from outside Belgium. However, under this Article, present Belgian statutory law is liberalized with respect to

(1) United States source dividends received by a Belgian corporation.

(2) United States source business and personal services income, and

(3) certain items of United States source income received by a citizen of the United States who is a resident of Belgium.

These provisions are contained in paragraph (3) of Article 23 of the proposed Convention. Subparagraph (a) of paragraph (3) corresponds to subparagraph (f) of paragraph (3) of Article 12 of the existing Convention. Under this provision, items of income which are not subject to the provisions of subparagraphs (b) through (d) and which have been taxed by the United States in accordance with the provisions of Articles 6 through 21, are exempt by Belgium from tax. But, Belgium may take such items of income into account for the purpose of determining the rate of tax which is to be applied against the remaining income. The items of income included in this provision are

(1) industrial and commercial profits subject to United States tax by reason of their being attributable to the maintenance by the taxpayer of a permanent establishment in the United States;

(2) income from real property situated in the United States;

(3) salaries. pensions, and annuities paid by the United States or by any political subdivision thereof to United States citizens or other individuals who qualify for the governmental exemption and reside in Belgium;

(4) compensation for labor or personal services performed in the United States and taxed by the United States in accordance with the dependent or independent personal services Articles, and

(5) any other business or personal service income which may be taxed by the United States in accordance with the Convention.

Also included within the scope of subparagraph (a) are items of income that are covered by subparagraph (g) of the existing Convention. These items are interest, dividends, and royalties which are taxed by the United States by reason of the fact that they are effectively connected with a permanent establishment in the United States maintained by a Belgian taxpayer.

Subparagraph (b) conforms generally to subparagraphs (c) and (d) of the existing Convention. Subparagraph (b) grants a credit based upon existing Belgian law subject to any subsequent modification thereof which, however, may not affect the principles of existing law, for dividends received by an individual and interest and royalties received by any resident of Belgium. The credit is allowed against the tax imposed on the net amount of dividends from corporations in the United States as well as of interest and royalties from sources in the United States which have been taxed there. At the present time the credit is an amount equal to 15 percent. This is fixed by Belgian law regardless of the amount of tax paid.

Subparagraph (c) is a new provision dealing with income not expressly mentioned which is taxable by the State of source under Article 22 (Income Not Expressly Mentioned). Under this provision where a resident of Belgium receives income which has been taxed by the United States under Article 22 (Income Not Expressly Mentioned) the amount of Belgian tax proportionately attributable to such income shall not exceed the amount which would be imposed in accordance with Belgian law if such income were taxed as earned income derived from sources outside Belgium and subject to foreign tax. In the case of corporations, the rate would be one-fourth the normal rate. In the case of individuals, the rate would be one-half the normal rate.

Subparagraph (d) corresponds to subparagraph (a) of the existing Convention. This provision has the effect of incorporating into the Convention the present statutory treatment of corporations or other entities. It provides that dividends taxed by the United States under paragraph (2) of Article 10 (Dividends) of the Convention at the reduced 15-percent rate shall be exempt from Belgian corporate income tax to the extent that such exemption would be granted under Belgian law if both corporations were Belgian corporations subject to the Belgian corporate income tax. The Belgian law to be applied is the Belgian law applicable at the time the dividends were received by the Belgian corporation. Under present Belgian law the amount of the exemption is 95 percent (90 percent in the case of portfolio holding companies) of the amount of the dividend after reduction for all taxes including the United States withholding tax and the Belgian personal property prepayment (précompte mobilier). This provision does not prohibit the withholding from these dividends of such précompte as imposed by Belgian law. The present rate of tax is 10 percent of the amount of the dividend actually received by the Belgian corporation.

Subparagraph (e) corresponds generally to subparagraph (b) of the existing Convention and provides an exception in favor of United States source dividends to the rules provided in subparagraph (d) dealing with the imposition by Belgium of the tax on dividends (précompte mobilier) received by a Belgian corporation or other entity subject to Belgian corporate tax. This exception is in addition to the exemption provided in subparagraph (d). Under this provision a Belgian corporation which receives dividends from a United States corporation on stock which has been directly owned by that Belgian corporation during the whole of the accounting period of the United States corporation which is subject in the United States to tax on its profits may elect to have such dividends exempted from the Belgian personal property prepayment (précompte mobilier) ordinarily applicable to such dividends. A Belgian corporation may elect this treatment by making a written request for such exemption when filing its annual tax return or before the expiration of the period allowed for the filing of such return. Under this provision the Belgian corporation deriving a dividend from a United States corporation (after the withholding of United States tax at the source at the 15-percent treaty rate)

(1) will not be required to pay the personal property prepayment otherwise due on receipt, and

(2) will be permitted to calculate its statutory corporate income tax exemption (as provided in subparagraph (d)) on the full dividend received.

This permits the qualified Belgian corporation receiving dividends from United States corporations to accumulate or reinvest a larger portion of such dividends than would be the case under Belgian law in the absence of this treaty provision. However, dividends accorded this exemption can not be deducted for purposes of determining the personal property prepayment applicable to dividends distributed by the recipient corporation or other entity to its shareholders or members. This provision differs from the existing provision in that, if Belgian legislation ever imposed a 10-percent ownership requirement for eligibility of the 90 and 95 percent dividend exemption for intercorporate dividends, then such similar 10-percent ownership requirement would also apply in order for a Belgian corporation to obtain the benefits of this provision.

Subparagraph (f) is generally comparable to subparagraph (e) of the existing Convention. This provision contains special relief with respect to certain income derived by a citizen of the United States who is a resident of Belgium and thus liable to income tax in both States on a worldwide basis. The existing provision provides that the Belgian individual income tax proportionately attributable to dividends, interest, pensions, annuities, or royalties received by a citizen of the United States residing in Belgium from sources within the United States may not exceed 15 percent of that income after allowance of the lump-sum foreign tax credit. Though residence in Belgium would ordinarily entitle individuals to an exemption from, or reduction in the rate of, United States tax on specified items of income under the Convention. such benefits are not available to United States citizens. The existing and proposed provisions provide a measure of relief in these circumstances by reducing the amount of Belgian tax which can be imposed on the specified items of income. The proposed provision provides that the Belgium income tax proportionately attributable to the dividends, interest, or royalties received by a citizen of the United States residing in Belgium from sources within the United States may not exceed 20 percent of that income after allowance of the lump-sum foreign tax credit. The existing provision was based on a personal property prepayment at the rate of 15 percent, which is now 20 percent. In the case of other income concerned, the amount of tax which would be imposed is the amount which would he imposed if such income were taxed as earned income derived from sources outside Belgium and subject to a foreign tax. This provision only applies to income which is not exempt from Belgian tax under subparagraph (a) or covered by subparagraph (c) which covers items of income not expressly mentioned.

Subparagraph (g) generally corresponds to subparagraph (h) of the existing Convention. Proposed subparagraph (g) provides that when, in accordance with Belgian law, losses incurred by a resident of Belgium in a permanent establishment situated in the United States have been effectively deducted from the profits of that resident for purposes of his taxation in Belgium, the exemption provided in subparagraph (a) should not apply in Belgium to the profits of other taxable periods attributable to the permanent establishment to the extent that those profits have also been reduced for United States tax purposes by reason of allowance of such losses.

Paragraph (4) provides for relief from double taxation in accordance with the principles of paragraphs (2) and (3) in the case of a corporation which is treated as a United States corporation for United States tax purposes and a Belgian corporation for Belgian tax purposes.

ARTICLE 24
Nondiscrimination

Paragraph (3) of Article 20 of the existing Convention provides that citizens or corporations or other juridical persons of one State will not be subjected to more burdensome taxes in the other State than are imposed on the citizens or corporations or other juridical persons of such other State. The proposed Convention substitutes a modernized nondiscrimination Article which bans discrimination by one State against the citizens of the other State or permanent establishments of residents or corporations of the other State. Thus, for example, a citizen of Belgium who is a resident of the United States and who meets the requirements specified in section 911 of the Internal Revenue Code would, under this Article of the proposed Convention, be eligible for the benefits of section 911 although he is not also a citizen of the United States.

This Article provides, however, that a State may accord special treatment to its own residents on the basis of civil status or family responsibility.

This Article also deals with the fact that Belgian domestic law provides for a lower rate on distributed earnings of a Belgian corporation (30% basic rate) than on retained earnings of a Belgian corporation (up to 35% basic rate) and applies only the higher rate to the income of a Belgian permanent establishment of a foreign corporation. This is recognized as discriminatory and the proposed Convention provides that in the case of a Belgian permanent establishment of a United States corporation the lower rate for retained earnings will apply to that part of the earnings of the permanent establishment deemed distributed. It is provided in this Convention that the permanent establishment is deemed to distribute the same percentage of its earnings as the corporation of which it is a part distributes of its earnings. The provision permits Belgium, however, to impose its surcharge on the higher rate consistent with its domestic law.

The ban on discrimination extends to all taxes without regard to subject matter and whether imposed at the national, State or local level.

This Article is substantially similar to the nondiscrimination Article of the OECD Model Convention except that the Model includes a provision concerning Stateless persons which has been omitted from the proposed Convention.

ARTICLE 25
Mutual Agreement Procedure

This Article modernizes the mutual agreement procedures found in the existing Convention by adopting provisions similar to those in the recent amendments to our Conventions with the Netherlands, the United Kingdom, and the Federal Republic of Germany and in our recently revised Convention with France. When a resident of one State considers that action of one or both States has resulted, or will possibly result, in taxation contrary to the provisions of the proposed Convention, such resident may present his case to the competent authority of the State of which he is a resident within 2 years from the date the resident is notified (or collection is made at the source) of the tax (or, where the problem arises from inconsistent action of both States, within two years from the date the resident is notified, or from collection at source, of the tax which has been last asserted or collected). This remedy is in addition to any remedy provided by the national laws of either State.

This Article contemplates that the competent authority of the two States will endeavor to settle by mutual agreement such cases of taxation not in accordance with the Convention as well as any other difficulties or doubts arising as to the application of the Convention. Some particular areas on which the competent authorities may consult and reach agreement are the amount of industrial and commercial profits to be attributed to a permanent establishment, the allocation of income, deductions, credits, or allowances between a resident and a related person, the determination of source of particular items, and the meaning of any term used in the Convention.

In implementing the provisions of this Article, the competent authorities will communicate with each other directly and meet together for an exchange of oral opinions when advisable.

In cases in which the competent authorities reach agreement with respect to a particular matter, taxes will be adjusted and refunds or credits allowed in accordance with such agreement. This provision permits the issuance of a refund or credit notwithstanding procedural barriers otherwise existing under state's law, such as the Statute of Limitations.

This provision w ill apply only where agreement or partial agreement has been reached between the competent authorities and will apply in the case of any such agreement after the Convention goes into effect even though the agreement may concern taxable years prior thereto.

Revenue Procedure 70-18 sets forth the procedure followed by the United States in implementing its obligations under this type of Article.

ARTICLE 26
Exchange of Information

This Article provides for a system of administrative cooperation between the competent authorities of the two States and specifies conditions under which information may be exchanged to facilitate the administration of the Convention and to prevent fraud and the avoidance of taxes to which the Convention relates.

Information exchanged is treated as secret and may not be disclosed to any persons other than those (including a court or administrative body) concerned with the assessment, collection, enforcement, or prosecution of taxes subject to the Convention, but this does not prohibit disclosure in the course of a court proceeding. In no case does this Article impose an obligation on either state to disclose trade secrets or similar information or to carry out administrative measures or supply particulars where such action would be at variance with the laws or administrative practice of that State, or contrary to public policy. In general, the standard for the exchange of information is the standard used by the States in the enforcement of their own laws by administrative and judicial authorities.

The mutual exchange of information called for by these provision is presently in effect in most of the conventions to which the United States is a party and is substantially similar to the provision contained in the existing Convention.

ARTICLE 27
Assistance in Collection

This Article, substantially similar to the assistance in collection Article in the existing Convention, provides for mutual assistance in the collection of taxes where required to avoid an abuse of the Convention. The provision is intended merely to insure that the benefits of the Convention will only be available with respect to persons entitled to such benefits; it does not in any way alter rights under other provisions of the Convention.

The Article provides that each State will endeavor to collect for the other State such amounts as may be necessary to insure that any exemption or reduced rate of tax granted under the proposed Convention will not be availed of by persons not entitled to those benefits. However, this Article will not require a State, in order to collect taxes which are imposed by the other State, to undertake any administrative measures that differ from its internal regulations or practices nor will this Article require a State to undertake any administrative or judicial measures which are contrary to that State's sovereignty, security, or public policy.

ARTICLE 28
Miscellaneous

This Article contains provisions normally found in other parts of tax conventions to which the United States is a party. Paragraph (1) is identical to Article 28 of the French Convention. This paragraph preserves the existing fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements. Paragraph (2) is substantially identical to paragraph (3) of Article 22 of the French Convention. This continues the general rule of taxation found in most tax conventions that the Convention does not affect in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of a State in the determination of tax imposed by that State, or by any other agreement between the States. Even though the OECD Model Convention does not contain a comparable provision, this rule reflects the well-established principle that the Convention will not have the effect of increasing the tax burden on residents of the signatory countries. This rule represents the position of the United States under all conventions to which it is a party except that, to the extent a Convention specifically provides, it may be necessary to waive certain rights as a condition of claiming more advantageous treaty benefits. Paragraph (3) provides that the competent authorities of the two States may communicate with each other directly for the purpose of carrying out the provisions of this Convention.

ARTICLE 29
Extension to Territories

This Article provides a method for extending the Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, to all or any areas for whose international relations the United States is responsible and which area imposes taxes substantially similar in character to those which are the subject of the Convention. It is limited to extension by the United States since Belgium no longer has any colonies or territories.

Extension to an area may be accomplished through a written notification given to Belgium through diplomatic channels. Belgium shall indicate its acceptance by a written communication through diplomatic channels. When the notification and communication have been ratified in accordance with the constitutional procedures of each State and instruments of ratification exchanged, the extension will take effect from the date of, and be subject to such conditions as are specified in, the notification. Without such acceptance and exchange of instruments of ratification in respect of an area, none of the provisions of the Convention shall apply to such areas.

Either of the States may terminate an extension with respect to any area by 6 months' prior written notice of termination given to the other State at any time after the date of entry into force of the extension. The termination will take effect for taxable years beginning on or after the first day of January next following the expiration of the 6-month period. The termination of an extension to a particular area will not affect the application of the Convention to the United States, Belgium, or any other area to which the Convention has been extended.

Termination of the Convention by either State in accordance with Article 31 (Termination) shall, unless otherwise expressly agreed by both States, terminate the application of the Convention to any area to which the Convention has been extended under this Article.

ARTICLE 30
Entry into Force

This Article provides for the ratification of the proposed Convention and for the exchange of instruments of ratification. The Convention will enter into force one month after the data of exchange of such instruments. However, the provisions shall first have effect with respect to income of calendar years or taxable years beginning (or in the case of taxes payable at source, payments made) on or after January 1, 1971.

The entry into force of the proposed Convention will terminate the Convention of October 28.1948, the Supplementary Conventions of September 9, 1952, and August 22, 1957, as well as the Protocol of May 21, 1965.

ARTICLE 31
Termination

The Convention will continue in effect indefinitely, but may be terminated by either State at any time after the year 1975. A State seeking to terminate the Convention must give notice at least 6-months before the end of the calendar year through diplomatic channels. If the Convention is terminated, such termination will be effective with respect to income of calendar years or taxable years beginning (or, in the case of taxes payable to source, payments made) on or after January 1 next following the expiration of the 6-month period. However, upon prior notice to be given through diplomatic channels, the provisions of Article 17 (Social Security Payments) may be terminated by either State at any time after this Convention enters into force.

October 6, 1970.

PROTOCOL

Technical Explanation of the Supplementary Protocol Signed at Washington. D.C. on December 31, 1987 Modifying and Supplementing the Convention Between the United States of America and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Signed at Brussels on July 9. 1970.

The Protocol signed at Washington, D.C. on December 31, 1987 (hereafter referred to as "the Protocol") amends the Convention signed on July 9, 1970 (hereafter referred to as " the 1970 Convention"). It is an intermediate step in the renegotiation of the 1970 Convention.

The technical explanation is an official guide to the Protocol. It reflects policies behind particular provisions and understandings reached with respect to the application and interpretation of the Protocol.

ARTICLE 1

Article 1 of the Protocol replaces Article 10 (Dividends) of the 1970 Convention. The principal change is to reduce to 5 percent the maximum allowable rate of tax at source on direct investment dividends.

Paragraph 1 states that dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State. This provision, which comes from the OECD Model Draft Income Tax Convention confirms the provision of paragraph 1 of Article 23 (Relief from Double Taxation) of the 1970 Convention that each State reserves the right to tax its residents.

Paragraph 2 provides that such dividends may also be taxed in the Contracting State of which the company paying the dividends is resident; but if the beneficial owner is a resident of the other State, the tax may not exceed specified limits. The tax is limited to 5 percent of the gross amount of the dividends if the beneficial owner is a company which directly owns at least 10 percent of the voting stock of the company paying the dividends, and to 15 percent of the gross amount of the dividends in all other Cases. The 10 percent direct ownership test for the 5 percent rate is consistent with the requirements of section 902 of the Internal Revenue Code for claiming an indirect foreign tax Credit. The Convention signed in 1970 limited the tax to 15 percent of the gross amount of the dividends without regard to the degree of ownership of the shareholder.

Paragraph 3 defines the term “dividends” for purposes of this Article. The first sentence is the same as the definition of dividends in the OECD Model Draft Income Tax Convention. The second Sentence permits Belgium to exercise an anti-abuse provision of its law by treating as dividends certain income with respect to capital invested by the owners of an unincorporated Belgian Company, for example interest on loans made to a closely-held general partnership by one or sore of its partners. A similar provision was included in the 1970 Convention.

Paragraph 4 provides that, where the beneficial owner of the dividends is a resident of one Contracting State and the holding giving rise to the dividends is part of the assets of a permanent establishment or fixed base through which the owner carries on business or performs services in the other State, the dividends are not taxable in accordance with this Article, but in accordance with the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), whichever applies. This similar rule is also carried over from the 1970 Convention.

Paragraph 5 provides that dividends paid by a company which is a resident of a Contracting State to a resident of that same State shall be exempt from tax by the other State, except insofar as the dividends are paid with respect to a holding which forms part of the assets of a permanent establishment or fixed base in that other State. Where that exception applies, the dividends are covered under paragraph 4. Where the United States is the other Contracting State, it may also tax dividends paid by a Belgian company to a U.S. citizen resident in Belgium; the right to tax U.S. citizens is preserved in paragraph I of Article 23 (Relief from Double Taxation). The United States generally may not impose a second level withholding tax on dividends paid to residents of Belgium; however, it may impose such a tax in accordance with its law (including other income tax treaties on dividends paid by a Belgian company to residents of third countries. This provision is substantially similar to paragraph 4(a) of Article 10 (Dividends) of the 1970 Convention.

Paragraph 6 confirms Belgium's right to tax, in accordance with its internal law, dividends derived from Belgian corporations by the Belgian permanent establishment of a U.S. resident. Under current Belgian law, dividends paid by Belgian corporations are subject to a withholding tax of 25 percent. When the shareholder is another Belgian corporation which has held the shares for the full tax year, 95 percent of such dividends are exempt from corporate tax and the withheld amount may be credited against the corporate tax on other income. When the shares are part of the assets of a Belgian permanent establishment of a foreign corporation, the same exclusion applies, but the 25 percent withholding tax is a final tax; it may not be claimed as a credit against the Belgian tax on other income of the permanent establishment. This provision corresponds to the second sentence of paragraph 3 of Article 10 (Dividends) of the 1970 Convention.

ARTICLE 2

Article 2 simply corrects a cross-reference.

ARTICLE 3

Article 3 inserts a new Article 12A (Limitation on Benefits) to ensure that the reduced withholding rates at source on dividends, interest and royalties provided in the Convention, as amended by the Protocol, will not be the object of “treaty shopping” by residents of third countries.

Paragraph 1 provides that a resident of a Contracting State (other than an individual) shall not be entitled to relief from taxation at source under Articles 10 (Dividends), 11 (Interest) or 12 (Royalties) unless one of three conditions is met. The first condition has two parts. More than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of each class of its shares) must be owned by residents of a Contracting State, the States themselves or political subdivisions or local authorities thereof, or U.S. citizens. In addition, more than 50 percent of the gross income of the person may not be paid out as interest or royalties to persons who are not qualifying owners, as defined above.

The second test, which is an alternative to the first, is that the person derives the dividends, interest or royalties in connection with, or incidental to, the active conduct of a trade or business in the Contracting State of which it is a resident. For this purpose a business the principal activities of which are making or managing investments in the other State (where the income arises) does not qualify as the active conduct of a trade or business.

The third test, which is an alternative to the other two, is that the principal class of shares of the company deriving the dividends, interest, or royalties is substantially and regularly traded on a recognized securities exchange, or that more than 50 percent of each class of its shares is owned by a resident of the same Contracting State which meets the substantial and regular trading requirement. For this purpose a "recognized securities exchange" is defined (in paragraph 3) to mean a U.S. Securities exchange for purposes of the Securities Exchange Act of 1934, the NASDAQ System, the Belgian stock exchanges, and any other securities exchange agreed upon by the competent authorities of the United States and Belgium.

Paragraph 2 explains how each Contracting State will interpret the term "gross income" in applying this Article. The United States will use the definition in the Internal Revenue Code, applying it to worldwide gross income. Belgium does not have a corresponding statutory definition. In its case the measure will be gross receipts or, for an enterprise which produces goods, gross receipts less the direct costs of labor and materials attributable to such production and payable out of such receipts.

ARTICLE 4

Article 4 provides the terms of the entry into force of the Protocol and the effective dates of its provisions. The Protocol, which will be an integral part of the 1970 Convention, is subject to ratification. The instruments of ratification will be exchanged at Washington, D.C. and the Protocol will enter into force on the fifteenth day after the date of that exchange. The provisions of the Protocol shall have effect retroactively with respect to dividends, interest, and royalties paid or credited on or after January 1, 1988.

ARTICLE 5

Article 5 provides that the Protocol, as an integral part of the 1970 Convention, shall remain in force as long as the 1970 Convention remains in force and shall terminate simultaneously with that Convention. A special rule, however, permits separate termination of the Protocol after it has been in force for five years if either State gives Six months' notice of termination in writing through diplomatic channels. In such a case, the provisions of the Protocol would cease to have effect for amounts paid or credited on or after the first day of January of the year following the notice of termination, and the provisions of the 1970 Convention, as it applied prior to amendment by the Protocol, shall have effect with respect to such amounts. This special rule is included, not because of any anticipated dissatisfaction with the operation of the Protocol, but as an indication of the intent of both sides to complete renegotiation of a full new treaty as promptly as feasible.

EXCHANGE OF NOTES

An exchange of notes, signed at the same time as the Protocol, confirms the understanding of the two delegations that the term beneficial interest', as used in paragraph 1(a)(i) of Article 12A (Limitation on Benefits) of the English text of the Protocol has the same meaning in the French and Dutch texts of the Corresponding provision, notwithstanding any imprecision in the translations of that phrase.